

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

**(1) REEDHYCALOG UK, LTD., and
(2) REEDHYCALOG, LP,**

Plaintiffs,

v.

(1) DIAMOND INNOVATIONS, INC.,

Defendant.

and

(1) DIAMOND INNOVATIONS, INC.

Counterclaim Plaintiff,

v.

**(1) REEDHYCALOG UK, LTD., and
(2) REEDHYCALOG, LP,**

Counterclaim Defendants.

Civil Action No. 6:08-cv-00325

**DEFENDANT/COUNTERCLAIM PLAINTIFF DIAMOND INNOVATIONS, INC.'S
MOTION TO SUPPLEMENT THE RECORD**

Defendant Diamond Innovations, Inc. (“DI”) hereby moves to supplement the record by including the attached Exhibits, which consist of 1) demonstratives that were used at trial; 2) exhibits from DI’s exhibit list regarding comparisons of Plaintiffs’ commercial product with the Gigl cutters, Mr. James Singer’s opinions, and testing of the cutters in 2004, all of which were not offered into evidence because of the Court’s pretrial preclusion rulings; and 3) unredacted versions of admitted exhibits that were redacted by RH because of the Court’s pretrial evidentiary preclusion rulings. The Federal Rules of Appellate Procedure provide that the record on appeal consists of: “(1) the original papers and exhibits filed in the district court; (2) the transcript of proceedings, if any; and (3) a certified copy of the docket entries prepared by the district clerk.” Fed. R. App. P. 10(a). DI offers these exhibits to ensure a complete record is available to an appellate court.

PROPOSED SUPPLEMENTS

Attached as Exhibit A are the slides used with Dr. Stephen Hayden during his direct testimony. *See* Trial Tr., June 8, 2010 PM at 92-172; Trial Tr., June 9, 2010 AM 11-20.

Attached as Exhibit B are the slides used with Dr. Paul Gigl during his direct testimony. *See* Trial Tr., June 8, 2010 AM at 36-63.

Attached as Exhibit C is the ‘447 Thermal Gradient Claim chart used with Dr. Hayden during his direct testimony. *See* Trial Tr., June 8, 2010 PM at 138-42.

Attached as Exhibit D is an image from the NovaDiamond website used during Mr. David Hall’s cross-examination. *See* Trial Tr., June 4, 2010 PM at 27-28.

Attached as Exhibit E is DX 585 – Figure 15 in Dr. Hayden’s report – Measured Leach Depths and Averages Per Sample (in Microns).

Attached as Exhibit F is DX 586 – Figure 16 in Dr. Hayden’s report – Typical EDS line scans of an RHL sample and a RHEXIV sample.

Attached as Exhibit G is DX 588 – Figure 18 in Dr. Hayden’s report – Corrected Weight Percent Co in ReedHycalog and Bovenkerk & Gigl Example IV Leached ReedHycalog Cutters.

Attached as Exhibit H is DX 589 – Figure 19 in Dr. Hayden’s report – ReedHycalog Cutters VTL Abrasion Resistance Results.

Attached as Exhibit I is DX 590 – Figure 20 in Dr. Hayden’s report – Leach Depth Chart.

Attached as Exhibit J is DX 591 – Figure 21 in Dr. Hayden’s report – Leached Volume Co Concentration Chart.

Attached as Exhibit K is DX 593 – Figure 23 in Dr. Hayden’s report – Line scans of additional ReedHycalog PCD table.

Attached as Exhibit L is DX 594 – Figure 24 in Dr. Hayden’s report – Line scans of additional Bovenkerk & Gigl Example IV PCD table.

Attached as Exhibit M is DX 496 showing leach depth of Bovenkerk-Gigl sample and ReedHycalog 2000 sample.

Attached as Exhibit N is unredacted PTX0051.

Attached as Exhibit O is unredacted PTX0581.

Attached as Exhibit P is unredacted PTX0617.

Attached as Exhibit Q is PTX0628, the unredacted version of PTX0638.

Attached as Exhibit R is DX 95 email from Marc Davidson to James Singer December 22, 2004.

Attached as Exhibit S is DX 268 email from Gurkirat Sekhon to James Singer August 30, 2004.

Attached as Exhibit T is DX 506 email from Gurkirat Sekhon to James Singer September 20, 2004.

Attached as Exhibit U is DX 512 email from Nitu Sekhon to James Singer December 17, 2004.

Attached as Exhibit V is DX 597 – Figure 27 in Dr. Hayden’s report - Cutter N-19 VTL Wear Flats as a Function of Linear Feet Cut.

Attached as Exhibit W is the declaration of Regan Fay handed to the Court during the June 2, 2010 hearing. *See* Hearing Tr., June 2, 2010 at 7.

Exhibits A through D are demonstratives that were used at trial by DI and Exhibit W was presented to the court at a pre-trial hearing. These materials were considered by the Court or the jury and therefore are properly part of the record.

Exhibits E through M and R through V, which were included in DI’s list of exhibits, were not offered into evidence because of the Court’s pretrial preclusion rulings barring presentation of comparisons of Plaintiffs’ commercial product with the Gigl cutters, and Mr. James Singer’s opinions and the 2004 testing. Similarly, Exhibits N through Q are unredacted versions of admitted exhibits that were redacted by RH because of the Court’s pretrial evidentiary preclusion rulings. Because these exhibits were addressed by the Court’s pretrial rulings they are properly part of the record.

Wherefore, DI respectfully moves the Court to grant the requested supplementation of the record by including the attached exhibits.

DATED: August 4, 2010

Respectfully submitted,

By: /s/Ronald L. Grudziecki with permission by
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CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of August, 2010, a copy of the above and foregoing **Defendant/Counterclaim Plaintiff Diamond Innovations, Inc.'s Motion To Supplement The Record** was filed electronically with the Clerk of the Court using the CM/ECF system, which sent notification of such filing to all parties and counsel in this case.

/s/ Robert M. Parker
Robert M. Parker

CERTIFICATE OF CONFERENCE

Pursuant to Local Rule CV7(h), DI certifies as follows: On Tuesday, August 3, the parties participated in a meet-and-confer. Present on behalf of DI were Brianna Forbes and John Ferman. Present for Plaintiffs were Matt Rodgers and David Morehan. This meet and confer was unsuccessful.

/s/ Robert M. Parker
Robert M. Parker